Supreme Court, U.S.
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No. 91-1761
October, 1991 Term
IN THE SUPREME COURT OF THE
UNITED STATES

FRANK PRAVDA,

Petitioner,

-against-

UNITED STATES OF AMERICA; STATE OF NEW YORK; COUNTY OF SARATOGA, N.Y.; CITY OF SARATOGA SPRINGS, N.Y.; GEORGE HERBERT WALKER BUSH; JAMES D. BOWEN; JOHN M. HOGAN, JR.; ERNEST GRANT; TIMOTHY C. GRANT; JANICE GRANT; JOHN DOE; MAX DOE; JACK DOE; JAMES DOE; RONALD DOE; ROBERT DOE; PHIL DOE,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether the dismissal of Petitioner's complaint for failure to state a cause of action under 42 U.S.C Section 1983 and Section 1985 presents a question which warrants review by this Court.

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TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE CITY OF SARATOGA SPRINGS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals, filed on February 3, 1992, was not reported and is contained in Petitioner's Appendix. (Pet. App. 1a-4a) The opinion of the United States District Court for

the Northern District of New York, filed on August 14, 1991, was not reported and is contained in Petitioner's Appendix. (Pet. App. 5a-7a)

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on February 3, 1992. The Petition for Certiorari was received on May 1, 1992. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The statutes involved in this case are 42 U.S.C. § 1983 and 42 § U.S.C. 1985(2)(3). The text of these statutes is set forth in Petitioner's Appendix at 201a-204a. The procedural rule involved in this case is Fed. R. Civ. Pro. 12(b)(6), the text of which is set forth in Petitioner's Appendix at 205a-206a.

STATEMENT OF THE CASE

In April 1991, Petitioner Frank Pravda (hereinafter "Petitioner") commenced an action in the United States District Court for the Northern District of New York against Respondent City of Saratoga Springs (hereinafter "the City") and a variety of individuals and governmental entities, for damages under 42 U.S.C. Sections 1983 and 1985(2)(3). The apparent crux of his sixty-four page complaint is that the Respondents have formed a conspiracy to harass and torture Petitioner and otherwise deprive him of his civil rights. Petitioner alleges that he was the recipient of threats, was arrested and incarcerated, was injured during his incarceration, and was the target of military surveillance during the occurrence of recent incidents in

the Middle East. Petitioner alleges that these acts were carried out by the Respondents in furtherance on a conspiracy to take land owned by the Petitioner. (See complaint, paragraphs 32-35, Pet. App. 31a-45a.)

After the action was joined, several Respondents moved to dismiss the complaint. By Order dated August 14, 1991, the District Court (J. McAvoy) dismissed with prejudice all federal claims against all defendants on the grounds of sovereign immunity and failure to state a cause of action. Judge McAvoy also found that this litigation was frivolous. Pet. App. 5a-7a. The State law claims were dismissed without prejudice. Petitioner appealed this decision.

The U.S. Court of Appeals, Second Circuit, affirmed the District Court decision. Due to the vagueness of the complaint and all documents submitted by

Petitioner, the Court of Appeals found that giving Petitioner further opportunity to amend would be pointless and that dismissal was the proper remedy. Pet. App. 1a-4a.

SUMMARY OF ARGUMENT

Petitioner's complaint failed to set forth the detailed facts required to state a claim for violation of and conspiracy to violate his civil rights under 42 U.S.C. Section 1983 and Section 1985. The complaint also contains allegations which are incapable of proof and, at times, incapable of understanding. Since the briefs and memoranda subsequently submitted by Petitioner were merely a repetition of the allegations contained in the complaint, the Court of Appeals correctly concluded that allowing Petitioner more

time to amend his complaint would be pointless.

Since the criteria for stating a cause of action under 42 U.S.C. Section 1983 and Section 1985 is well settled and was properly applied by the Courts below, and the dismissal of an insufficient complaint has long been held to be an appropriate procedure, Petitioner has not presented questions which warrant review by this Court.

REASONS WHY THE WRIT SHOULD BE DENIED

I. PETITIONER HAS NOT PRESENTED QUESTIONS WHICH WARRANT REVIEW BY THIS COURT.

A. Petitioner's fundamental rights were not violated by the dismissal of his Federal Law claims.

Pursuant to 28 U.S.C. § 2072(a), "[t]he

Supreme Court [has] the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts . . . and courts of appeals." Federal Rule of Civil Procdure 12 sets forth the procedure for dismissing a complaint. Under paragraph (b), subsection (6), a complaint may be dismissed for "failure to state a claim upon which relief may be granted." As will be shown below, the District Court's decision which dismissed Petitioner's complaint, and the Court of Appeals' affirmance thereof were well within the precedents, established by this Court, to evaluate the sufficiency of claims under the civil rights act.

B. Petitioner's complaint is insufficient to state a cause of action under 42 U.S.C. § 1983 against the City.

In Monell v. Department of Social

Services of the City of New York, 436 U.S. 658, 691 (1978), this Court stated that the "touchstone of a Section 1983 action against a government body is an allegation that offical policy is responsible for a deprivation of rights protected by the Constitution." Based on this Court's analysis of municipal liability under Section 1983, the Second Circuit established a two-prong test to determine liability: 1)"the plaintiff . . . bears the burden of showing first that the governmental entity maintained or practiced an unconstitutional or unlawful "policy" or "custom"" and 2) "that that custom caused or was the "moving force" behind the violation." Dominguez v. Beame, 603 F.2d 337, 341 (1979), cert. denied, 446 U.S. 917 (1980).

In his complaint, Petitioner alleges that the City maintained a "data bank" and "torture chamber" wherein Petitioner was

allegedly subjected to "barbaric terrorist threats" and "violent assaults". See Pet. App. 35a-45a. These rambling, conclusory, and vague allegations which constitute Petitioner's pleadings and motion papers are clearly insufficient to support a claim of a "municipal policy [which] condones the commission of unconstitutional acts by its officers." See Katz v. Morgenthau, 709 F. Supp. 1219, 1228 (S.D.N.Y. 1989). Under these circumstances, and given the repetitive nature of the documents submitted by Petitioner, it cannot be said that the Court of Appeals' decision to affirm the dismissal of Petitioner's complaint deviated so far from the accepted and usual course of judicial proceedings so as to warrant supervision by this Court.

C. Petitioner's complaint fails to state a cause of action under 42 U.S.C. § 1985.

It is well established that in order to state a cause of action under 42 U.S.C. § 1985(3), the complaint must meet the specific pleading requirements set forth in the statute and enunciuated in Griffen v. Breckenridge, 403 U.S. 88 (1971). In addition, this Court has interpreted "[t]he language requiring intent to deprive of equal protection, or equal privileges and immunities, [as] mean[ing] that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. Id. at 102. This invidious discriminatory animus against a so-called "protected class" must also be plead to establish a claim under Section 1985(2). See e.g. Katz, supra,; Martin Hodas v. Lindsay, 431 F. Supp. 637

(S.D.N.Y. 1977).

In his complaint, Petitioner alleges that:

> he was targeted because he belongs to a class of citizens who owns property sought by politico-private-police-business-governmental interests and/or was an obstacle to said interests objectives in unlawfully gaining private property belonging to Pravda; and was also targeted becasue he belonged to a class of citizens of Eastern European descent. Pet. App. 92a.

Petitioner also alleged in his brief submitted to the Court of Appeals that he was a member of a class consisting of the "earlier generation". However, these allegations, even if true, do not rise to the level of animus against a class required to state a claim under Section 1985. See United Brotherhood of Carpenters & Joiners of America, Local 610 v. Scott, 463 U.S. 825, 838 (1983)(Section 1985(3) cannot be construed to reach conspiracies motivated by economic or commercial animus.)

Petitioner's complaint was properly dismissed because the complaint, on its face, did not allege the requisite discriminatory animus or membership in a protected class. The affirmance of this dismissal does not conflict with the decisions of this Court or of other courts of appeal. Therefore, there is is no need for review of said decision by this Court.

CONCLUSION

Based on the foregoing, the petition for certiorari should be denied.

Dated: May 25, 1992

Respectfully submitted,

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